

APR 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEFFREY W. OLNEY,

Plaintiff - Appellant,

v.

JOHN HARTWIG, Department of
Corrections Doctor, Snake River
Correctional Institution; et al.,

Defendants - Appellees.

No. 07-35233

D.C. No. CV-05-00296-TMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Ann Aiken, Chief Judge, Presiding

Submitted April 13, 2009^{**}

Before: GRABER, GOULD, and BEA, Circuit Judges.

Jeffrey W. Olney, an Oregon state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action for

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we reverse and remand.

There is no indication that Olney's grievance was rejected for the procedural bases urged by the defendants, thus they have not met their burden of demonstrating nonexhaustion. *See id.* at 1119 (“[D]efendants have the burden of raising and proving the absence of exhaustion.”). Accordingly, we reverse the district court's judgment and remand for further proceedings.

REVERSED and REMANDED.